

37 Am. Jur. 2d Fraud and Deceit § 36

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Fraud and Deceit

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II. Elements and Requisites

B. Particular Elements or Considerations

2. Relationship of Parties

§ 36. Scope of duty where confidential or fiduciary relationship exists—Breach of duty as tort

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Fraud](#)  1 to 7, 26

The courts generally do not recognize a breach of fiduciary duty as a stand-alone tort;¹ however, when monetary damages are sought, a claim or cause of action for breach of a fiduciary duty may be available but only if the breach gives rise to another cause of action.² It has also been held that a breach of fiduciary duty cause of action is a tort to remedy economic harm suffered by one party due to a breach of duties owed in a fiduciary relationship.³ Breach of fiduciary duty is a tort that arises from the violation of a relationship of trust and confidence.⁴

Where a breach of fiduciary duty is asserted as a tort claim, the plaintiff must prove that a fiduciary duty or relationship existed between the plaintiff and the defendant, that the defendant breached it, and that the breach proximately caused the plaintiff to suffer harm or damages.⁵ To establish a claim for breach of fiduciary duty, a plaintiff must prove: (1) that it was justified in reposing trust or confidence in the other party, or that the other party invited, accepted, or acquiesced in that trust; (2) that the other party assumed a primary duty to represent the plaintiff's interest in a transaction; (3) that the nature and scope of the duty extended to the subject matter of the claim; and (4) that it was damaged by the trustee's breach of that duty.⁶ Thus, a plaintiff must allege the actual placing of trust and confidence in the defendant and must show that there is some disparity in the bargaining positions of the parties and that the dominant party has abused its position of trust.⁷

Observation:

A confidential relationship giving rise to an informal fiduciary duty must exist prior to and apart from the agreement that is the basis of a suit which includes a breach of fiduciary duty claim.⁸ Before a fiduciary duty is imposed in a business context, the special relationship of trust and confidence must exist prior to, and apart from, the agreement made the basis of a breach of fiduciary duty suit.⁹

A fiduciary's duty of loyalty involves a state of mind, so that a claimed breach of that duty goes beyond simple negligence.¹⁰ However, fraud is not an element of an actionable breach of fiduciary duty claim.¹¹ Breach of fiduciary duty is not actionable unless injury accrues to the beneficiary or the fiduciary profits thereby.¹²

CUMULATIVE SUPPLEMENT

Cases:

Under Maryland law, to state a claim for negligence based on fiduciary duty, a plaintiff must allege that (1) a fiduciary relationship existed, (2) the fiduciary breached the duty it owed to the beneficiary, and (3) the breach caused harm to the beneficiary. [Sterling v. Ourisman Chevrolet of Bowie Inc.](#), 943 F. Supp. 2d 577 (D. Md. 2013).

To prevail on a breach of fiduciary duty claim under Nevada law, the plaintiff must establish: (1) the existence of a fiduciary duty; (2) breach of that duty; and (3) the breach proximately caused the damages. [Takiguchi v. MRI Intern., Inc.](#), 47 F. Supp. 3d 1100 (D. Nev. 2014).

Under New York law, the elements of a claim for breach of fiduciary duty are: (1) the existence of a fiduciary duty; (2) a knowing breach of that duty; and (3) damages resulting therefrom. [Barnett v. Countrywide Bank, FSB](#), 60 F. Supp. 3d 379 (E.D. N.Y. 2014).

Under New York law, the elements of a claim for breach of fiduciary duty are: (1) the existence of a fiduciary duty; (2) a knowing breach of that duty; and (3) damages resulting therefrom. [Schwartzco Enterprises LLC v. TMH Management, LLC](#), 60 F. Supp. 3d 331 (E.D. N.Y. 2014).

Under New York law, the elements of a cause of action to recover damages for breach of fiduciary duty are (1) the existence of a fiduciary relationship, (2) misconduct by the defendant, and (3) damages directly caused by the defendant's misconduct. [Miller v. Wells Fargo Bank, N.A.](#), 994 F. Supp. 2d 542 (S.D. N.Y. 2014).

In order to state claim for breach of fiduciary duty under Texas law, plaintiff must allege the existence of fiduciary duty, breach of that duty, causation, and damages. [In re Conex Holdings, LLC](#), 514 B.R. 405 (Bankr. D. Del. 2014).

There is no cause of action in Illinois for negligent or grossly negligent breach of fiduciary duty. [Palm v. 2800 Lake Shore Drive Condominium Ass'n](#), 2014 IL App (1st) 111290, 381 Ill. Dec. 222, 10 N.E.3d 307 (App. Ct. 1st Dist. 2014).

[END OF SUPPLEMENT]

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Footnotes

¹ [Latty v. St. Joseph's Soc. of Sacred Heart, Inc.](#), 198 Md. App. 254, 17 A.3d 155 (2011).

² [Latty v. St. Joseph's Soc. of Sacred Heart, Inc.](#), 198 Md. App. 254, 17 A.3d 155 (2011).

³ [Accident & Injury Medical Specialists, P.C. v. Mintz](#), 2012 CO 50, 279 P.3d 658 (Colo. 2012).

⁴ [State Resources Corp. v. Lawyers Title Ins. Corp.](#), 224 S.W.3d 39 (Mo. Ct. App. S.D. 2007); [Doe v. Roman Catholic Diocese of Rochester](#), 51 A.D.3d 1392, 857 N.Y.S.2d 866 (4th Dep't 2008), rev'd on other grounds, 12 N.Y.3d 764, 879 N.Y.S.2d 805, 907 N.E.2d 683 (2009).

- ⁵ Ruttenberg v. Friedman, 97 So. 3d 114 (Ala. 2012); Amtower v. Photon Dynamics, Inc., 158 Cal. App. 4th 1582, 71 Cal. Rptr. 3d 361 (6th Dist. 2008), as modified, (Feb. 15, 2008); Crusselle v. Mong, 59 So. 3d 1178 (Fla. 5th DCA 2011); Moses v. Pennebaker, 312 Ga. App. 623, 719 S.E.2d 521 (2011); Tully v. McLean, 409 Ill. App. 3d 659, 350 Ill. Dec. 434, 948 N.E.2d 714 (1st Dist. 2011); Western Blue Print Co., LLC v. Roberts, 367 S.W.3d 7 (Mo. 2012); McFadden Ranch, Inc. v. McFadden, 19 Neb. App. 366, 807 N.W.2d 785 (2011); Parekh v. Cain, 96 A.D.3d 812, 948 N.Y.S.2d 72 (2d Dep't 2012); Camp Mystic, Inc. v. Eastland, 2012 WL 2334604 (Tex. App. San Antonio 2012), rule 53.7(f) motion granted, (Oct. 22, 2012); Berner Cheese Corp. v. Krug, 2008 WI 95, 312 Wis. 2d 251, 752 N.W.2d 800 (2008).
- ⁶ Grynberg v. Total S.A., 538 F.3d 1336 (10th Cir. 2008) (applying Colorado law).
- ⁷ Anderson v. Hannaford Bros. Co., 659 F.3d 151 (1st Cir. 2011) (applying Maine law).
- ⁸ LeBlanc v. Lange, 365 S.W.3d 70 (Tex. App. Houston 1st Dist. 2011).
- ⁹ Daniels v. Empty Eye, Inc., 368 S.W.3d 743 (Tex. App. Houston 14th Dist. 2012), reh'g overruled, (June 6, 2012) and petition for review filed, (July 23, 2012).
- ¹⁰ Yates v. Holt-Smith, 2009 WI App 79, 319 Wis. 2d 756, 768 N.W.2d 213 (Ct. App. 2009).
- ¹¹ Joyner v. Liprie, 33 So. 3d 242 (La. Ct. App. 2d Cir. 2010), writ denied, 45 So. 3d 1043 (La. 2010); Moody v. Stribling, 127 N.M. 630, 1999-NMCA-094, 985 P.2d 1210 (Ct. App. 1999).
- ¹² Randolph v. ING Life Ins. and Annuity Co., 973 A.2d 702 (D.C. 2009).

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